IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13..4..2007

CORAM

THE HONOURABLE MR. JUSTICE K. CHANDRU

Writ Petition No.13406 of 2007
and
M.P.No.1 of 2007

Bharath Petroleum Corporation Ltd.
Rep. By its Chief Manager - HRS
P.K.Mallick
1 Ranganathan Gardens
Anna Nagar (West)
Chennai - 40 .. Petitioner

Vs.

1. Petroleum Employees Union
Rep. by its General Secretary
P.S.Janardhanan
Guruswamy Buildings
6 Kachaleeswarar Street,
Chennai

2. Petroleum Workers Union
Rep. by its General Secretary
G.Saravanan
35 Vaidyanathan Street
Tondiarpet, Chennai

3. Petroleum Employees Association
Rep. by its General Secretary
B.Balagopalan
C/o BPCL, Irumpanam
Kochi, Kerala

4. The Regional Labour Commissioner (Central)
Office of the Regional Labour Commissioner (Central)
Shastri Bhavan
Haddows Road
Chennai

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5. The Chief Labour Commissioner (Central)
Shram Shakti Bhavan
Rafi Marg
New Delhi .. Respondents

W.P.No.13406 of 2007 has been filed under Article 226 of the Constitution of India for the issuance of writ of Declaration declaring that the strike notice dated 30.3.2007 issued by the respondents 1 to 3 is illegal and violative of Section 23 of the Industrial Disputes Act, 1947 in view of the reference No.L-30011/70/2006-IR(M) dated 21.11.2006 made by the Central Government under Section 10(1)(d) and 10(2A) of the Industrial Disputes Act, 1947 referring the industrial dispute to the Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai.

For Petitioner : Mr. G.Masilamani, SC
for M/s King and Partridge

O R D E R

The writ petitioner Bharat Petroleum Corporation Limited is wholly owned by the Central Government and they have filed the present writ petition seeking for a declaration declaring that the strike notice dated 30.3.2007 issued by the respondents 1 to 3 is illegal and violative of Section 23 of the Industrial Disputes Act, 1947 [for short, 'I.D. Act']. This was in view of the fact that the proceedings are pending before the Central Government Industrial Tribunal - cum - Labour Court No.2 Mumbai, for adjudication of issues relating to the quantum of Performance Linked Incentive Scheme [hereinafter referred to as 'PLIS'] between the management and the workmen and to what relief the workmen are entitled.

2. I have heard the arguments of Mr.G.Masilamani, learned Senior Counsel appearing for M/s King & Partridge for the petitioner and have perused the records.

3. Learned Senior Counsel appearing for petitioner submits that the present strike notice dated 30.3.2007 issued by the respondents 1 to 3. Respondents 1 to 3 are admittedly Trade Unions registered under the Trade Union Act, 1926. Under the strike notice dated 30.3.2007, the Unions have given the following reasons in their strike notice:

> "(i) BPCL management has unilaterally declared the PLIS amount to be paid to the workmen without holding any discussions or informing the recognized unions which amounts to unfair labour practice as per clause No.1-15 of the Fifth Schedule of the Industrial Disputes Act, 1947.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(ii) The notional basic salary considered for calculation of PLIS amounts for the year 2004-05 and 2005-06 is totally non-existing and hypothetical.

(iii) Since workmen were getting certain amount of Ex-gratia and productive Incentive Scheme (PIS), the change unilaterally made for payment of PLIS in-lieu of ex-gratia amount is illegal change in the service condition for which, no notice under Section 9-A nor any understanding with the recognized union was made.

(iv) The PLIS amount paid in other Oil PSUs is based on different calculation. BPCL management did not offer discussions to justify their hypothetical manners and ignored and demand of the unions to consider the Actual Basic Pay and Dearness Allowance for calculation of PLIS."

4. It was stated that the Union will go one one day strike on 18.4.2007. Though notice dated 30.3.2007 was addressed to the Chairman and Managing Director at Mumbai and copy was marked to the writ petitioner, who is the Chief Manager - HRS, the petitioner has chosen to send a reply only on 05.4.2007, which is also filed in the typed set of papers. According to the reply, the workmen were aware of the dispute with reference to additional PLIS is pending for adjudication before the Central Government Industrial Tribunal at Mumbai and the petitioner Corporation is a declared Public Utility Service in terms of Section 2(1)(n) of the I.D. Act and any strike during the pendency of a dispute before a Tribunal renders the strike illegal under the provisions of the I.D. Act. The workmen were also further warned in paragraph 6 of the said letter, which is reproduced below:

"In the event of workmen taking part in the strike, for the reasons explained above, the strike would be deemed to be illegal.

Any participation of the workmen in the strike will attract deductions of wages and allowances on the principles of "No work No pay". Additionally, the management reserves the right to deduct from the salaries of the striking workmen penal deductions of wages and allowances up to eight days for every day of strike, either collectively or otherwise.

This would be in addition to any disciplinary action as may be warranted and deemed fit under the circumstances."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

When the writ petitioner Management has taken all the steps that are available to them under law, it is not clear as to why they should come to this Court seeking for declaration that the strike notice dated 30.3.2007 is illegal and violative of Section 23 of I.D. Act in view of the pending reference before the Tribunal at Mumbai.

5. Along with the writ petition, a Miscellaneous Petition was also filed in M.P.No.1 of 2007 seeking for an injunction restraining the respondents 1 to 3 from resorting to the strike, assemble within 200 Metres of the offices / installations / terminals / depots, picketing, dharna, stoppage of willing employees to work, preventing the ingress and eggress of the employees, cause obstruction to movement of men and materials and vehicles. But the interim injunction sought for in the Miscellaneous Petition has no nexus to the relief sought for in the main writ petition except for the issue relating to the strike, the other grievances, viz., assembling within 200 Metres of the offices / installations / depots, picketing, dharna and stoppage of willing employees to work, are not covered by the main relief that is sought for. Even if this Court declares that the strike is illegal, the assembling within 200 metres of the offices / installations / terminals / depots, picketing and dharna are not covered by any of the provisions of the I.D. Act. Therefore, the proper remedy for the writ petitioner is to approach the Civil Court and not to rush to this Court with omnibus prayer as has been sought in this case. If such a prayer is granted, that would amount to issuing a writ against private parties such as respondents 1 to 3 and such a prayer can never also be countenanced by this Court in normal circumstances and the Miscellaneous Petition is liable to be rejected on this ground alone.

6. However, Mr.G.Masilamani, learned Senior Counsel states that once it is established that the strike notice issued by the respondents 1 to 3 dated 30.3.2007 is illegal and contrary to the provisions of the I.D. Act, then this Court must necessarily admit the writ petition and grant injunction as prayed for. The learned Senior Counsel also took pains to take this Court to various provisions of the I.D. Act to establish that the strike was illegal if any one contravenes the provisions of Section 23(b) of the I.D. Act. He also relied upon a decision of a Division Bench of this Court reported in 2003 - III - L.L.J. 229 between the same parties.

7. Further, he also relied upon a decision of the Division Bench of the Bombay High Court reported in 2001 (1) BomCR819 between the same parties, decided on 24.11.2000. In that case, the Bombay High Court held that the writ petition will lie even against a private person if there is any statutory violation and that the breach of Section 23 of the I.D. Act is punishable under Section 26 of the I.D. Act. It creates a serious obligation on the employees and, therefore, writ jurisdiction can be invoked. With reference to bar under section 18 of the Trade Union Act

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

regarding the issuance of injunction against strike by Unions, it is stated that it can never prevent the Constitutional Court exercising its powers enshrined under the Constitution of India.

8. The effect of the Division Bench order of this Court (cited supra) is also to the same effect and in paragraph 16, this Court held as follows:

Para 16:"In view of the above, we hold that the conciliation proceedings are pending relating to the issue for which strike notice has been given and as the conciliation proceedings are pending, the prohibition contained in Clause (d), of sub-section (1) of Section 22 of the Industrial Disputes Act, 1947, came into operation right from the date of the notice of Conciliation Officer and as such, the strike by the respondents 1 and 2 is illegal in view of Section 24 of the Act."

9. The learned Senior Counsel appearing for the petitioner submitted that various Courts, viz., Kerala and Bombay High Courts, including this Court have given similar orders. Apart from the order of the Division Bench referred to above, earlier, on two occasions, this Court, in W.P.No.33906 of 2006 and 48826 of 2006, had granted ex parte injunction and, therefore, this Court must follow the same and grant the relief as prayed for. However, those two writ petitions are still pending before this Court.

10. The order of the Kerala High Court made in W.P.(C) No.24562 of 2006 F, a copy of which is produced in the paper book, between the same parties, disposed on 18.9.2006, had not granted any relief as sought for the in the petition and it merely observed as follows:

"Learned counsel appearing for the first respondent submitted that they will not create any obstruction to the functioning of the petitioner establishment and also to the free ingress and egress of the willing employees to the petitioners establishment at Irumpnam and at other installations. This submission is recorded. We also make it clear that the first respondent shall not conduct Dharna or any other demonstration in the near vicinity of the establishment so as to cause any inconvenience or disturbance to the petitioners establishment. If any obstruction is caused adequate and effective protection will be afforded by the third respondent."

Therefore, the aforesaid order has no relevance to the case on hand.

11. But one thing is very clear from the above narrations that a Public Sector Organisation like the petitioner, which is owned by the Central Government, has been resorting to similar writ petitions all over the country right from the year 2000 as seen from the order of the Bombay High Court and 2003 and 2006 as seen from the orders of the Division Bench

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of this Court and Kerala High Court respectively and from the order of the Delhi High Court as referred to in the Division Bench order and the petitioner Management has been moving the various High Courts every time when there is a notice of strike issued by their Trade Unions and the long arm of this Court had come to their rescue. It is a very unfortunate state of affairs. When sweeping powers are available to them under the provisions of law as to why they should seek the help of the Court to come to their rescue by issuance of a writ of extra ordinary nature that too, against the private parties.

12. At the outset, it must be stated that the issuance of prerogative writs, that too, against private persons, endowed with any statutory or public duty can only be in a rarest of the rare cases and the Courts have always held that it is only discretionary in nature. The conduct of the writ petitioner in moving Courts at repeated intervals all over India by frittering away public funds with such a litigation is highly unwarranted and should be encouraged. Therefore, this Court heard arguments both on the maintainability as well as the desirability of entertaining the writ petitions at repeated intervals.

13. The learned Senior Counsel fairly submitted that the Standing Orders of the writ petitioner establishment contains various list of misconducts. Further, the Standing Order 30(b) refers to the provisions of the Payment of Wages Act, 1936 with reference to imposing fine. It must be noted that none of the employees of the petitioner Corporation will be covered by the Payment of Wages Act as it is applicable only for employees drawing salary not exceeding Rs.1600/- per month. Standing Order 29.1.27 reads as follows:

> "Going on and/or participating in any illegal strike or stay in or sit down strike, or abetting, inciting, instigating or acting in furtherance thereof."

14. Therefore, if any employee violates the provisions of the Standing orders, disciplinary action can be resorted to. In fact, in the reply to the strike notice, the petitioner Management had stated that participation of the workmen in the strike will attract deductions of wages and allowances on the principles of 'No work No pay' and also it reserves the right to deduct from the salaries of the striking workmen penal deductions of wages and allowances up to eight days for every day of strike either collectively or otherwise. The Management must first enforce its powers against an erring employee and when it becomes futile exercise, then they can resort to the provisions of the I.D. Act by launching prosecution. When all these exercises are undertaken by them and if there was no desired result, they can think of moving the Courts as a last resort.

15. In view of the fact that the petitioner in the last seven years of litigation, had not resorted to any such exercise and there by no

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

averment in the affidavit, the larger question arises is whether any discretionary power should be exercised in their favour. Merely because they had sought for such a relief without acquitting themselves of their conduct, this Court is of the view that no such discretion should be shown in their favour.

16. In this context, it may be necessary to refer to the penal provisions found under the I.D. Act. The fact remains that the petitioner Corporation has been declared "Public Utility Service" within the meaning of Section 2(1)(n) of the I.D. Act and the I.D. Act requires giving of a strike notice by workmen. For going on strike, when a dispute is pending before the Labour Court, there is prohibition under Section 23(b) of the I.D. Act. Any contravention of the same is also punishable under Sections 26 and 27 of the I.D. Act and they are reproduced below:-

> "26. Penalty for illegal strikes and lock-outs.- (1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to fifty rupees, or with both
>
> (2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both."
>
> 27. Penalty for instigation, etc. -- Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

17. Apart from that, Schedule V lists out various "Unfair Labour Practices" and Part II of the said Schedule deals with the Unfair Labour Practices that may be committed by workmen. Item No.1 of Part II of Schedule V reads as follows:-

> "1. To advise or actively support or instigate any strike deemed to be illegal under this Act."

18. Indulging in Unfair Labour Practices has also been prohibited under the provisions of the I.D. Act and Section 25-T prohibits the commission of Unfair Labour Practice and Section 25-U prescribes the penalty for violation of Unfair Labour Practice. These two provisions are extracted below:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"25-T. Prohibition of unfair labour practice.- No employer or workman or a trade union, whether registered under the Trade Unions Act, 1926 (16 of 1926), or not, shall commit any unfair labour practice.

25-U. Penalty for committing unfair labour practices.- Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both."

Therefore, if a workman indulges in illegal strike, penalties including imprisonment has been prescribed and the petitioner is also armed with disciplinary powers apart from finding solutions within the provisions of the Act. It must be stated here that even the respondents 1 to 3 Trade Unions have also alleged in their strike notice about the 'Unfair Labour Practices' adopted by the writ petitioner. Going by the submissions made on behalf of the writ petitioner, if at the instance of the Unions and workmen writ petitions are entertained about the commission of 'Unfair Labour Practices' by the Managements, then the Courts will become a litigants galore.

19. The attempt of the petitioner to come before this Court seeking for a declaratory relief is an exercise in futility. Even on previous occasions, the petitioner had come forward with prayers claiming similar relief and declarations have been made to the effect that going on a strike pending a reference will be an illegal strike. When it has been patently made as a part of legal provision, the Court need not repeatedly make declarations to the same effect that too, between the same parties.

20. What is more important is that the concept of a strike is a creation under the I.D. Act, which is a special statute and that statute itself prescribes the remedies in case of any illegalities being committed. The decision of the Supreme Court reported in (1976) 1 SCC 496 [Premier Automobiles Ltd. vs. K.S.Wadke], settles the legal issue regarding the above aspect. The Industrial Disputes Act is a comprehensive and self-contained code insofar as it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein. Neither the civil court nor any other tribunal or body can award relief. Untwalia, J., speaking for an unanimous court, has, in Premier Automobiles observed : SCC p. 503 para 8]

> "The object of the Act, as its preamble indicates, is to make provision for the investigation and settlement of industrial disputes, which means adjudication of such disputes also. The Act envisages collective bargaining, contracts between union representing the workmen and the management, a matter which is outside the realm of the common law or the Indian law of contract."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

After sketching the scheme of the Act, the learned Judge stated the law thus : [SCC p. 505, paras 9, 10]

> ". . . the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act."

21. Subsequently, when an issue relating to a damage claim made against the workmen for going on illegal strike by an arbitrator's Award, came up for consideration, the Supreme Court in its decision reported in (1976) 2 SCC 82 [Rohtas Industries Ltd. and another vs. Rohtas Industries Staff Union and others] dealt with the said issue and held in paragraphs 28 to 30, which is as follows:

Para 28: "It is common case that the demands covered by the strike and the wages during the period of the strike constitute an industrial dispute within the sense of Section 2( k ) of the Act. Section 23, read with Section 24, it is agreed by both sides, makes the strike in question illegal. An "illegal strike" is a creation of the Act. As we have pointed out earlier, the compensation claimed and awarded is a direct reparation for the loss of profits of the employer caused by the illegal strike. If so, it is contended by the respondents, the remedy for the illegal strike and its fallout has to be sought within the statute and not de hors it. If this stand of the workers is right, the remedy indicated in Section 26 of the Act viz. prosecution for starting and continuing an illegal strike, is the designated statutory remedy. No other relief outside the Act can be claimed on general principles of jurisprudence. The result is that the relief of compensation by proceedings in arbitration is contrary to law and bad.

Para 29: .... In Doe v. Bridges [(1831) 1 B & Ad 847 (2)] are the famous and of quoted words of Lord Tenterden, C.J., saying:

> Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."

Barraclough v. Brown [1897 AC 615], decided by the House of Lords is telling, particularly Lord Watson's statement of the law at p. 622:

"The right and the remedy are given uno flatu and one cannot be dissociated from the other."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

In short, the enforcement of a right or obligation under the Act, must be by a remedy provided uno flatu in the statute. To sum up, in the language of the Premier Automobiles Ltd. [SCC pp. 513-514, para 23]:

"If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act."

Para 30: Since the Act which creates rights and remedies has to be considered as one homogeneous whole, it has to be regarded uno flatu, in one breath, as it were. On this doctrinal basis, the remedy for the illegal strike (a concept which is the creature not of the common law but of Section 24 of the Act) has to be sought exclusively in Section 26 of the Act."

[Emphasis added]

22. Therefore, the writ petitioner cannot come to this Court each time when the workmen or their respective Trade Union issue strike notice and seek for a similar relief. But, on the contrary, they can exercise their managerial power and bring about normalcy by taking appropriate action in terms of relevant laws as are available to them. The present declaratory relief is one based upon the provisions of the I.D. Act and no other rights under any other laws are claimed by the petitioner. They must be directed to approach the forums created under the I.D. Act and must be told that remedy by way of writ jurisdiction under Article 226 of the Constitution of India is not available to them.

23. In this context, it is also relevant to quote the opinion of the Supreme Court reported in (1980) 2 SCC 593 [Gujarat Steel Tubes Ltd. and others vs. Gujarat Steel Tubes Mazdoor Sabha and others] wherein in paragraph 129, it was observed as follows:

Para 129:"The right to unionise, the right to strike as part of collective bargaining and subject to the legality and humanity of the situation, the right of the weaker group, viz, labour, to pressure the stronger party, viz., capital, to negotiate and render justice, are processes recognised by industrial jurisprudence and supported by Social Justice. While society itself, in its basic needs of existence, may not be held to ransom in the name of the right to bargain and strikers must obey civilised norms in the battle and not be vulgar or violent hoodlums, Industry, represented by intransigent Management's, may well be made to reel into reason by the strike weapon and cannot then squeal or wail and complain of loss of profits or other ill-effects but

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

must negotiate or get a reference made. The broad basis is that workers are weaker although they are the producers and their struggle to better their lot has the sanction of the rule of law. Unions and strikes are no more conspiracies than professions and political parties are, and, being far weaker, need succour. Part IV of the Constitution read with Article 19, sows the seeds of this burgeoning jurisprudence. The Gandhian quote at the beginning of this judgment sets the tone of economic equity in industry. Of course, adventurist, extremist, extraneously inspired and puerile strikes, absurdly insane persistence and violent or scorched earth policies boomerang and are anathema for the law. Within these parameters the right to strike is integral to collective bargaining."

24. Apart from this, it must be noted that the provisions of Section 18 of the Trade Union Act, which was enacted as early as in the year 1926, reads as follows:

> "18. Immunity from civil suit in certain cases.- (1) No suit or other legal proceeding shall be maintainable in any civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act one in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.
>
> (2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil Court in respect of any tortuous act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions give by, the executive of the Trade Union."

25. Even though the Bombay High Court has held that this cannot be a bar for the Court for exercising its constitutional power, I respectfully disagree with the decision of the Bombay High Court. This provision was incorporated into the Trade Union Act, 1926 at a time when the Constitution was not enacted and it was thought that the Civil Courts should not interfere with the collective bargaining at the instance of an employer as it will weaken the power of the workmen from collectively bargaining with their employer. Subsequent to the advent of the Constitution, the Trade Union Act and more particularly, Section 18 has not been held to be unconstitutional and it is very much in the Statute book. Therefore, with the principle that has been enunciated under

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Section 18 of the Trade Union Act and the Constitutionality of the said provision not being under challenge, the Court must take the spirit of the said section and refrain itself from interfering with a dispute which is purely an industrial dispute.

26. While granting any relief of injunction, the Court must also keep the principles behind the Specific Relief Act. Section 14 of the specific Relief Act, 1963 reads as follows:

> "14. Contracts not specifically enforceable.- (1) The following contracts cannot be specifically enforced, namely:-
>
> (a) a contract for the non-performance of which compensation in money is an adequate relief;
>
> (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
>
> (c) a contract which is in its nature determinable;
>
> (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise."
>
> [Emphasis added]

27. Sections 14(1)(b) and (d) of the Specific Relief Act are very relevant because ultimately, when the Court grants an injunction against unspecified persons, then it also takes upon the responsibility of its enforcement and many times, such orders are violated with impunity. Then it will result in a situation in which the authority of the Court itself will be undermined. Therefore, even in terms of Sections 14(1)(b) and (d) of the Specific Relief Act, the prayer sought for by the writ petitioner cannot be granted. The decisions of this Court and the various other High Courts in which the petitioner got relief never considered the binding precedents set out in Rohtas case and Premier Automobiles case and also the relevant provisions of the Trade Union Act and the Specific Relief Act.

28. Finally, in the present case, the respondents 1 to 3 have only given a notice for a day's strike, viz., on 18.4.2007, as per their notice. Whether it will bring the desired result which the workmen want to achieve or not is the concern of this Court. However, one has to ponder over whether inspite of there being a legal prohibition, can any section of the society or aggrieved persons can resort to strike as a remedy.

29. A Full Bench of the Kerala High Court reported in AIR 1997 KERALA 291 [Bharat Kumar K.Pancha and another vs. State of Kerala and others] headed by Justice K.G.Balakrishnan, [as he then was], held that no political party has right to call for a bandh. It was observed in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

paragraph 13 as follows:

Para 13: "... We cannot also ignore the increasing frequency in the calling, holding and enforcing of the bundhs in the State and the destruction of public and private property. In the face of this reality, we think that when we consider the impact of a bundh on the freedom of a citizen, we are not merely theorising but are only taking note of what happens around us when a bundh is called and a citizen attempts either to defy it or seeks to ignore it."

After laying down the principle, it was further held in paragraph 14 as follows:

Para 14: "... It maybe true that the political parties and organisers may have a right to call for non co-operation or to call for a general strike as a form of protest against what they believe to be either an erroneous policy or exploitation. But when exercise of such a right infracts the fundamental right of another citizen who is equally entitled to exercise his rights, the question is whether the right of the political party extends to right of violating the right of another citizen.

... Moreover, nothing stands in the way of the political parties calling for a general strike or hartal unaccompanied by express or implied threat of violence to enforce it."

[Emphasis added]

30. The said decision was taken on appeal to the Supreme Court and the decision of the Supreme Court is reported in AIR 1998 SC 184 [Communist Party of India (M) v. Bharat Kumar and others] where the Supreme Court in paragraph 3 of its judgment, while approving the decision of the Kerala Full Bench, observed as follows:

"... We may also observe that the High Court has drawn a very appropriate distinction between a "Bandh" on the one hand and a call for general strike or "Hartal" on the other. We are in agreement with the view taken by the High Court."

31. It will also be interesting to note that the Supreme Court which dealt with a Public Interest Litigation filed with a view to prohibit the frequent lawyers' strikes vide its decision reported in 2003 (2) SCC 45 [Ex-Capt. Harish Uppal v. Union of India and another] held that the lawyers have no right to go on a strike or to give a call for boycott. But the Apex Court finally held in paragraph 35 of the judgment, which is as follows:-

"It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the court to decide whether or not the issue involves dignity or

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before advocates decide to absent themselves from court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar."

It must be noted that the judgment of the Full Bench of the Kerala High Court regarding Bandh call by police parties, which was subsequently confirmed by the Supreme Court, was also referred to with approval in this decision. These decisions are referred to not with a view to justify the action of the respondents 1 to 3 but only to highlight the anxiety expressed by the Apex Court in protecting the right to dissent even in cases of parties who may contravene some provisions of law. Therefore, I do not find the writ petition merits any attention by this Court.

32. It must also be stated that the Supreme Court vide its decision reported in AIR 1987 SC 1109 [Shri Sachidanand Pandey and another v. The State of West Bengal and others] considered the case of the maintainability of a writ petition and the kind of relief that may be granted to parties. It will be relevant to quote the judgment of Justice V.Khalid, who gave his supporting judgment, which is found in paragraph 60 and the same is extracted below:

Para 60: "It is only when Courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the Courts, especially this Court, should leave aside procedural shackles and. hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending. help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self imposed restraint on public interest litigants." [Emphasis added]

33. In the light of the above, the writ petition fails and the same shall stand dismissed. Consequently, connected Miscellaneous Petition will stand closed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

gri

To

1. The Regional Labour Commissioner (Central)
   Office of the Regional Labour Commissioner (Central)
   Shastri Bhavan
   Haddows Road
   Chennai

2. The Chief Labour Commissioner (Central)
   Shram Shakti Bhavan
   Rafi Marg, New Delhi

1 cc To M/S.King and Partridge, Advocate, SR.24205.

W.P.NO.13406 of 2007

BV(CO)
RVL 16.04.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/